tions where employers' liability acts have been enacted. By an act of Congress, the use of automatic couplings, on all cars engaged in interstate business, is made compulsory, and it is expressly provided that employees shall not be deemed to have assumed the risk occasioned by the employer's failure to comply with the act. U. S. Comp. St. 1901, Vol. 3, p. 3176. Much unnecessary litigation would be saved if the state legislatures would incorporate a similar provision into their liability acts. A number of late cases involving the question now under consideration have been noted and discussed in these pages during the current year. See 4 MICH. LAW REV., pp. 165, 241, 487.

MASTER AND SERVANT—SERVANT INJURED BY SOMETHING HIS DUTY REQUIRES HIM TO INSPECT.—A railroad station agent was injured by falling into an excavation and against a derailing switch which had been constructed on his own premises without his consent, he supposing they were upon the company's premises. It was the duty of the plaintiff to keep the station grounds in proper condition for the comfort and convenience of passengers. The defendant had notified him of the completion of the switch, though as it was a derailing switch he was not supposed to keep it lighted. *Held,* that the defendant had committed a trespass, but it became the plaintiff's duty upon notification to inspect it, and if he failed to do so he cannot recover for his injuries. *Wood* v. *New York Central & H. R. R. Co.* (1906), — N. Y. —, 77 N. E. Rep. 27.

There is a strong dissenting opinion in the case by Chase, J., which is concurred in by two of his associates. However, the case really turns on the question whether it was the plaintiff's duty in fact to inspect the switch, and Judge Chase contends that it is not shown but what the grounds were in proper condition for patrons and that the switch was safe for trains. He then goes on to argue that even if under the circumstances the plaintiff failed to remember for the moment, though he in fact knew that work had been performed, that would suggest special care on his part while proceeding in the darkness after arriving thereon, he was not guilty of contributory negligence as a matter of law, and cites *Weed* v. *Villiage,* 76 N. Y. 329; *Dollard* v. *Roberts,* 130 N. Y. 269, 29 N. E. 104, 14 L. R. A. 238; *Kaiser* v. *Washburn,* 55 App. Div. 159, 66 N. Y. Supp. 764; but these are all cases in which the plaintiff was a stranger with no duty to inspect, and the majority specifically admit that were the plaintiff a stranger to the company he could recover in the present instance. But as pointed out in the majority opinion, the grounds were in a perfect condition and the switch was in a safe condition for the operation of trains, and it would not seem that the mere fact that plaintiff was employed by the defendant should bar his recovery. However, the proposition laid down in the majority opinion that if anyone is injured through a failure to inspect something which it is his duty to inspect he cannot recover for the injuries, is well settled. 1 LABATT, MASTER AND SERVANT, §416, and cases cited; also, *Penn. Co.* v. *Congdon,* 134 Ind. 226.

PATENTS—CONTRACTS—ROYALTIES.—Defendant acquired the right to manufacture and sell plaintiff's patented article (a kind of metal basket) during the life of the patent, but failed to pay the royalties under the contract;

whereupon plaintiff recovered judgment against him for the same and for the cancellation of the contract, which was affirmed on defendant's appeal. Pending the appeal, defendant continued to make and sell the baskets. *Held,* that plaintiff was entitled to recover the royalties in the contract on the baskets made pending the appeal; his failure to procure an injunction restraining their manufacture and sale during that time not precluding a recovery on the contract. *Bennett* v. *Iron Clad Mfg. Company* (1906), 96 N. Y. Supp. 968.

The court held that as the defendant by its acts assumed to treat the judicial annulment of the contract as erroneous, it ought not to be allowed to disclaim liability under it, saying: "The provision declaring the contract forfeited, being for the benefit of the plaintiff, was one which he might waive if he so desired and avail himself of his right of action thereunder so long as the defendant, by proceeding precisely along the terms thereof, conceded its validity to all intents and purposes, although disputing that fact as to a period of time prior to the one during which it was so operating under the contract." The court cited, as analogous in principle: *Union Mfg. Co. of Norwork* v. *Lounsbury et al.,* 41 N. Y. 363 (but see dissenting opinion); *Hayatt* v. *Ingalls,* 124 N. Y. 93; *Skinner* v. *Wood M. & R. M. Co.,* 140 N. Y. 217. In the two former cases the contract was terminated by the plaintiff himself; not by the court at the plaintiff's request; however, the last case above cited seems inapplicable, as the contract was not rescinded but simply enforced as to royalties thereunder to a certain date. *Denise* v. *Swett,* 68 Hun 188, supports the majority holding, but it was reversed in 142 N. Y. 602, and the latter case (while not referred to) supports the dissenting opinion of Spring, J., concurred in by Hiscock, J., to the effect that as the judgment abrogated the agreement between the parties, the plaintiff may have a remedy by injunction, or for an infringement of his patent, or to recover damages independently of the contract, but that he *cannot* "annul the agreement and still continue to reap the fruits of it."

RAILROADS—ESTABLISHMENT OF DEPOTS—AUTHORITY OF RAILROAD COMMISSION.—Petition for mandamus to compel the railroad company to erect a passenger depot in the town of Lexington. The railroad maintained a freight and passenger depot in the outskirts of the town. The state railroad commission, on proper petition and after a complete examination of the old depot, its surroundings and the site of the proposed depot, made the order now sought to be enforced by mandamus. *Held,* that the Code did not empower the commission to require a railroad to maintain in one town two detached depots, one for freight and one for passengers, and had reference only to the original establishment of depots and to the location of new ones desired by the company. *State* v. *Yazoo & M. V. R. R. Co.* (1906), — Miss. —, 40 So. Rep. 263.

The sections of the code construed were these: "Every railroad shall establish and maintain *such depots* as shall be reasonably necessary for the public convenience * * * and it shall be unlawful for any railroad to abolish or disuse any depot when once established * * * without the consent of the commission." "The commission may designate the site or location of any *new*